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EXAMINER

ANDERSON, CATHARINE L

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/879,151
Filing Date: June 13, 2001
Appellant(s): STENBERG, ANDERS

Travis D. Boone
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4 December 2009 appealing from the Office action mailed 23 June 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,307,119	CAMMAROTA et al	10-2001
5,839,585	MILLER et al	11-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-2, 5-11, 19-25, and 46-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Cammarota et al. (6,307,119).

With respect to claims 1-2, 7, 10-11, 21, and 24-25, Cammarota discloses an absorbent article comprising a liquid pervious topsheet 42, a liquid impervious backsheet 40, and an absorbent body 44. The backsheet 40 comprises a strip part 30 and a remaining part 34, as shown in figure 1. The strip part 30 comprises graphics having a color that is different from the color of the remaining part 34, as shown in figure 1. The strip part comprises the portion having colored graphics printed thereon, which is disclosed in column 11, lines 10-13, as being 6 cm. The strip part 30 may comprise a separate strip of material 114 of the backsheet 40, as shown in figure 9B. A wetness indicator 66 is arranged inside of the backsheet 40 in a pattern, as shown in figure 1 and described in column 21, lines 41-46. The wetness indicator 66 is disposed on the strip part 30, and facilitated by the strip part 30 having a different color than the remaining part 34 of the backsheet. The color of the strip part 30, when it changes color to indicate wetness, provides an indication of the absorbent capacity of the article by showing that the article is capable of absorbing liquid.

With respect to claims 5 and 19, the strip part 30 extends the entire length of the article, as shown in figure 2.

With respect to claims 6 and 20, the strip part 30 extends in the transverse direction of the article, which is intended to be folded in half at a part of the article that includes the strip part 30, as shown in figure 1.

With respect to claims 8 and 22, the article comprises printed symbols, as shown in figure 1, which indicate the product type as a wetness-indicating diaper.

With respect to claims 9 and 23, the article is a diaper.

With respect to claims 46 and 47, the wetness indicators 66 are disposed in the strip part 30 between the printed graphics having a different color than the remaining backsheet, and therefore the different color of the graphics facilitates location of the wetness indicators since they are bordered by the colored graphics.

Claims 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cammarota et al. (6,307,119) in view of Miller (5,839,585).

Cammarota discloses all aspects of the claimed invention with the exception of the articles being packaged as a plurality of articles of at least two different sizes. Miller teaches the packaging of absorbent articles of at least two different sizes or types to provide the user with a choice of products, as disclosed in column 2, lines 17-21. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the absorbent articles of Cammarota in a package including a plurality of articles of at least two different sizes or types, as taught by Miller, to provide the user with a choice of products.

(10) Response to Argument

The Examiner has provided additional reasoning in the rejection under 35 U.S.C. 102(e), but since the rejection is maintained under the same statute and prior art as the rejection of the Office action mailed 23 June 2009, it is not considered to be new grounds of rejection.

In regards to the Appellant's arguments with respect to the indicia comprising printed matter, it is noted that while the claimed indicia while should not be considered to be printed matter, the indicia disclosed by Cammarota can be used to indicate the absorbent capacity of the article.

Cammarota discloses wetness indicators 66 located on the strip part 30 of the article, as shown in figure 1, which change color when the article has absorbed liquid. Therefore the color of the strip part 30, when it changes color to indicate wetness, provides an indication of the absorbent capacity of the article by showing that the article is capable of absorbing liquid.

The Appellant may file a Reply Brief as set forth in 37 CFR 41.41 to address the additional reasoning provided in the Grounds of Rejection above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

C. Lynne Anderson

Art Unit: 3761

/Lynne Anderson/

Examiner, Art Unit 3761

Conferees:

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